IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1097 OF 2003

ALONG WITH

CRIMINAL WRIT PETITION NO.1098 OF 2003

Shri Ashok L.Chandwani ...Petitioner

Versus

Shri Mahesh K.Bijalani & Ors. ...Respondents

.....

Mr.Girish Kulkarni with Mr.Laxman P.Kanal
for Petitioner.
Mr.V.B.Naik with Mrs.Deepa Ahuja for Respondent No.1.
Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent No.3.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 12, 2005.

P.C.

1. Heard Counsel for the parties.

2. The only contention raised before this Court is that statutory notice has been sent to the Applicant, who incidentally is a partner of the

accused firm and signatory to the cheque in question. The argument is that unless statutory notice was addressed to the firm, no cause of action to proceed, would arise and the liability of the Applicant arises only because of the deeming provision under Section 141 of the Negotiable Instruments Act.

3. To get over this position, learned Counsel for the Respondent No.1 contends that the Applicant being the signatory to the cheque and admittedly, partner of the firm, notice sent to such partner is sufficient compliance of the statutory provision. To buttress this submission, reliance is placed on the decision of the Apex Court reported in **(1999) 5 SCC 693 in the case of Bilakchand Gyanchand Co. vs. A.Chinnaswami**. This judgment is, however, distinguished by the Counsel for the Applicant on the argument that the same pertains to notice issued to the Managing Director of the Limited Company and that principle cannot be invoked in case of a partnership firm, though registered.

4. Having considered the rival submissions, I

find no substance in these Petitions. Indeed, Section 138 of the Act requires that statutory notice should be addressed to the drawer of the cheque. Expression 'drawer' has been defined in Section 7 of the Act to mean the maker of a bill of exchange or cheque. In the present case, the Applicant is admittedly, signatory to the cheque in question and partner of the accused firm, which is a registered partnership firm. Applying the principles underlying the decision of the Apex Court, the fact that no notice is sent to the firm as such, cannot be the basis for quashing the criminal action. Accordingly, these Petitions should fail and the same are dismissed.

A.M.KHANWILKAR, J.